

STATE OF MAINE

DIRIGO HEALTH AGENCY

RE: DETERMINATION OF)	ORDER ON
AGGREGATE MEASURABLE)	INTERVENTION
COST SAVING FOR THE SECOND)	AND RESPONSE TO
ASSESSMENT YEAR (2007))	OBJECTIONS TO
)	PROCEDURAL ORDER
)	NO. 1

Anthem Health Plans of Maine, Inc. d/b/a Anthem Blue Cross and Blue Shield (“Anthem BCBS”), the Maine Association of Health Plans (“MAPH”), the Maine State Chamber of Commerce (“Chamber”) and the Maine Automobile Dealers Association Insurance Trust (the “Trust”) have filed timely applications to intervene in this proceeding. Each of these applicants included with their applications objections to a draft of Procedural Order No. 1.

Order on Intervention

Anthem BCBS is the State’s largest health insurance carrier and the current administrator of the DirigoChoice Health Plan. As an insurance carrier, it has a responsibility under the Dirigo Act to use its best efforts to ensure that it has recovered savings offset payments through negotiated reimbursement rates. 24-A M. R. S. A. § 6913 (7). Sharon Roberts, Director of Stakeholder Relations for Anthem BCBS, participated in the Working Group established pursuant to P. L. 2005, ch. 400 and was as a party to proceedings before the Superintendent of Insurance pursuant Chapter 400 regarding the Dirigo Board’s determination of aggregate measurable cost savings for the first assessment year. The Board has not received a timely objection to Anthem BCBS’s

application to intervene. The application to intervene as a party is granted pursuant to 5 M. R. S. A. § 9054 (1).

The **MAHP** is a business association that advocates for its members. Its members include health insurers, health maintenance organizations and third party administrators. Anthem BCBS is a member of MAHP. The health insurer members of MAHP have a responsibility under the Dirigo Act to use their best efforts to ensure that they have recovered savings offset payments through negotiated reimbursement rates. 24-A M. R. S. A. § 6913 (7). Some members of MAHP may be required to make savings offset payments based on the determination of aggregate measurable cost savings. Katherine Pelletreau, Executive Director of MAHP, regularly attended meetings of the Working Group established by Chapter 400. Joe Mackey of MAHP also attended some meetings. MAHP participated as a party in proceedings before the Superintendent of Insurance pursuant Chapter 400 regarding the Dirigo Board's determination of aggregate measurable cost savings for the first assessment year. The Board has not received a timely objection to MAHP's application to intervene. The application to intervene as a party is granted pursuant to 5 M. R. S. A. § 9054 (1).

. The **Chamber** is a statewide business association. Its members include businesses that provide group health coverage for their employees through self-funded plans and through insured plans. To the extent insurance carriers are permitted to pass on to employers the savings offset payments made to Dirigo Health, the businesses represented by the Chamber may be impacted by the determination of aggregate measurable cost savings. Kristine Ossenfort, Senior Governmental Affairs Specialist for the Chamber, was an alternate member of the Working Group established by Chapter

400. The Chamber actively contributed to the Board's consideration of aggregate measurable cost savings for the first assessment year and retained an expert to evaluate a methodology proposed by the Dirigo Health Agency. Chamber participated as a party in proceedings before the Superintendent of Insurance pursuant Chapter 400 regarding the Dirigo Board's determination of aggregate measurable cost savings for the first assessment year. The Board has not received a timely objection to Chamber's application to intervene. The application to intervene as a party is granted pursuant to 5 M. R. S. A. § 9054 (1).

The **Trust** is a multiple employer welfare arrangement ("MEWA") that secures health insurance for approximately 3,200 employee participants, and approximately 5,800 insurable lives. The Trust employs a third-party administrator ("TPA") to manage and administer its health insurance programs. To the extent its TPA is permitted to pass on to the Trust the savings offset payments made to Dirigo Health, the Trust and the businesses represented by the Trust may be impacted by the determination of aggregate measurable cost savings. Bruce Gerrity, counsel for the Trust, regularly attended meetings of the Working Group established by Chapter 400. The Trust participated as a party in proceedings before the Superintendent of Insurance pursuant Chapter 400 regarding the Dirigo Board's determination of aggregate measurable cost savings for the first assessment year. The Board has not received a timely objection to the Trust's application to intervene. The application to intervene as a party is granted pursuant to 5 M. R. S. A. § 9054 (1).

Objections to Procedural Order

MAHP, Chamber, Anthem BCBS and the Trust (“Applicant Intervenors”) application have objected to a draft of Procedural Order No. 1 (“Draft Order”) on numerous grounds. They object to a requirement that parties submit a proposed methodology to determine aggregate measurable cost savings with supporting data. The Legislature has directed the Board to determine “annually not later than April 1st the aggregate measurable savings, including any reduction or avoidance of bad debt and charity care costs to health care providers in this State as a result of the operation of Dirigo Health and any increased MaineCare enrollment due to an expansion in MaineCare eligibility occurring after June 30, 2004.” 24-A M. R. S. A. §6913 (1)(A). In order to fulfill this responsibility, the Board would benefit from the presentation of alternative methodologies for determining aggregate measurable cost savings. The Board is aware, however, that imposing on a party a requirement that the party submit an alternative methodology may limit the number parties that could meaningfully participate in the proceeding. Accordingly, the Board has made the presentation of an alternative methodology optional. A party that intends to submit an alternative methodology will be required to submit the methodology in accordance with any procedural order that the Board may issue.

The application object that the Draft Oder does not provide for discovery. This is an administrative proceeding governed by the Maine Administrative Procedures Act. (“APA”) The Act does not require that there be an opportunity for discovery. To the extent the Dirigo Health Agency has information that is not publicly available from other

sources that application believe is necessary to prepare their case, application can request the information under the Maine Freedom of Access Act. Related to this objection is the objection of application to the schedule for established for the proceeding. The schedule is driven by the short time frame the Legislature has established for the Board to make a determination of aggregate measurable cost savings; informed by the fact that the proceeding comes on the heels of an adjudicatory hearing before Superintendent of Insurance in October 2005; and the familiarity of all interested persons with the issues presented.

With regard to the charge of the application that parties have not be given enough time to prepare a case, the Board notes that the Dirigo Act as originally enacted in 2003 included the requirement that the Board, after an adjudicatory hearing, make a determination of aggregate measurable cost savings not later than April. This provision was carried over into Chapter 400. Application were members of, or attended the meetings of, the Working Group and were parties to proceedings before the Superintendent in October 2005. Application, therefore, have had more than sufficient notice that the Board would be holding an adjudicatory hearing prior to April of 2006. Furthermore, the Board requested that the application join in an effort the amend the Dirigo Act to change the date for a determination of aggregate measurable cost savings in order to allow all parties sufficient time to collect and evaluate data and to prepare for a proceeding on aggregate measurable cost savings for the second assessment year. The application refused to support such an effort. Under these circumstances, the application cannot be heard to object to the schedule set by the Board.

Dated: February 17, 2006

BOARD OF DIRECTORS
DIRIGO HEALTH AGENCY

A handwritten signature in black ink, appearing to read "Robert McAfee", written in a cursive style.

Robert McAfee, M. D. Chair